TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible]. 1914

No. [illegible]. 380

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, AND JAMES McBEE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED MARCH 4, 1914.

(24078)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 927.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, AND JAMES McBEE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

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1 In the District Court of the United States for the District of Kansas, First Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, and JAMES McBEE, defendants. } No. 4134.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States: To Charles Lewis, Lewis Howard, Fred Withers, and James McBee, greeting:

You, and each of you, are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, in the city of Washington, in the District of Columbia, in the United States of America, within thirty days from the date hereof, pursuant to a writ of error issued out of the Supreme Court of the United States, upon the 16th day of February, 1914, and filed in the office of the clerk of said court, in a cause heretofore pending in the District Court of the United States for the District of Kansas, entitled as above, wherein the United States of America is plaintiff in error, and you and each of you are defendants in error, to show cause, if any there be, why the decision and judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

2 Witness the honorable John C. Pollock, judge of the District Court of the United States of America, for the district of Kansas, this 16th day of February, in the year of our Lord One Thousand Nine Hundred and Fourteen.

JOHN C. PALLOCK,
Judge of the United States Court for the District of Kansas, First Division.

Attest:

[SEAL.] MORTON ALBAUGH,
Clerk of the United States Court for the District of Kansas, First Division.

We, the undersigned attorneys of record for the defendants in error in the above-entitled case, do hereby acknowledge due and proper service of the foregoing citation, and enter our appearance in the Supreme Court of the United States of America.

Dated at Kansas City, Kansas, this 16th day of February, 1914.

THOMPSON & BRADY,
Attorneys for Defendants in Error.

2½ (Indorsed:) No. 4134. In the District Court of the United States, district of Kansas, first division. United States of America, plaintiff, vs. Charles Lewis, Lewis Howard, Fred Withers, and James McBee, defendants. Citation.

3 Be it remembered that at a term of the District Court of the United States for the District of Kansas, first division, begun and held at the city of Leavenworth in said division and district, on Monday, the 13th day of October, 1913, the following proceedings, among others, were had and appear of record in said court in Journal "S" to wit:

THURSDAY, *October 16th, 1913.*

Now comes the grand jury into open court, and through its foreman presents bills of indictment in the following cases, to wit: (Among others) The United States vs. Charles Lewis, Lewis Howard, Fred Withers, and James McBee, No. 4134, charge: destroying Government seal; which bills of indictment being filed by the clerk in the presence of the jury, it is ordered by the court that the same be placed on the criminal docket of this court.

4 *Indictment.*

UNITED STATES OF AMERICA,
District of Kansas, First Division, ss:

In the District Court of the United States in and for the district aforesaid, at the October term thereof, A. D. 1913.

The grand jurors of the United States, impaneled, sworn, and charged at the term aforesaid, of the court aforesaid, on their oath present that Charles Lewis, Lewis Howard, Fred Withers, and James McBee on or about the 23rd day of January, in the year 1913 in the said division of said district, and within the jurisdiction of said court, in the county of Wyandotte and State of Kansas, did then and there, without lawful authority, knowingly, wrongfully, unlawfully, wilfully, and feloniously alter, deface, break, and destroy a certain mark, tag, or label, in words and figures as follows, to wit: "Government Seal No. 1451074," then and there being upon a certain railroad freight car designated as Car S. R. L. No. 4422, containing meat and meat products then and there under Government supervision for inspection and offered for transportation from the State of Kansas to the State of New Jersey; said mark, tag, or label having theretofore been affixed to and upon said car containing said meat and meat products in accordance with the rules and regulations issued by the Secretary of Agriculture under authority of the act of Congress approved June 30, 1906, entitled: "An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1907," which said rules and regulations were then and there in

5 full force and effect.

And the grand jurors aforesaid, on their oath aforesaid, do further present that the said Charles Lewis, Lewis Howard, Fred Withers, and James McBee on or about the 23rd day of January, in the year 1913, in the said division of said district, and within the jurisdiction of said court, in the county of Wyandotte and State of Kansas, did

then and there, without lawful authority, knowingly, wrongfully, unlawfully, wilfully, and feloniously alter, deface, break, and destroy a certain seal, label or identification device in words and figures as follows, to wit:

I. D. Form 1001 E.

U. S. Department of Agriculture,
Bureau of Animal Industry.

WARNING

Meat product—Do not break this seal
under penalty of the law.

PENALTY.

Fine not exceeding $10,000 or imprisonment
for a period of not more than two years, or
both.

JAMES WILSON, *Secretary.*

then and there affixed to and being upon a certain freight car designated as Car S. R. L. No. 4422, containing meat and meat products then and there under Government supervision for inspection and offered for transportation from the State of Kansas to the State of New Jersey; said seal, label, or identification device having theretofore been affixed to and upon said car containing said meat and meat products in accordance with the rules and regulations issued by the Secretary of Agriculture under authority of the act of Con-
6 gress approved June 30, 1906, entitled "An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1907," which said rules and regulations were then and there in full force and effect, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

FRANCIS M. BRADY,
First Assistant United States Attorney.

(Endorsed:) Bond, $500 each. J. C. P. No. 1131. Dist. Court of the United States for the First Division of the District of Kansas. The United States *vs.* Charles Lewis, Lewis Howard, Fred Withers, and James McBee. Indictment. Destroying Government seal. 34 Stat. 1263; 1909 Supp. Anno. Stat. 49 and 50. Penalty: Fine not more than $10,000 or imprisonment not more than two years, or both. A true bill. David B. Ryan, foreman. Filed October 16th, A. D. 1913. Morton Albaugh, clerk. Francis M. Brady, first asst. U. S. attorney. Witnesses: Dr. J. Fleming, Kansas City, Ks.; R. J. Wetzel, Kansas City, Ks.; W. A. Stillwell, Kansas City, Ks.; William Steele, Kansas City, Ks.; W. H. Crew, Kansas City, Ks.; Thomas D. Casey, 103 Miami Ave., Kansas City, Ks.; J. C. Robinson, Kansas City, Ks.; P. J. Brown, Mill St., K. C., Ks.; Mrs. Howard, Shawnee Ave., K. C., Ks.

7 In the District Court of the United States for the District of Kansas. First Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, and JAMES McBEE, defendants.	No. 1134.

Motion to quash indictment.

Come now the above-named defendants, Charles Lewis, Lewis Howard, Fred Withers, and James McBee, by their attorneys, Thompson & Brady, and makes this their motion and moves the court to quash the indictment in the above-entitled case and counts one and two thereof, for the following reasons, to wit,

1. Said indictment in counts one and two thereof attempts to charge defendants with a felony when no law or statute of the United States was in existance at the time alleged in said indictment, making the acts therein charged a felony.

2. Said indictment and counts one and two thereof do not state facts sufficient to constitute a violation of any United States statute in force and effect on January 23rd, 1913, for the reason that said seal, label, or identification device and mark, tag, or label, set out in said indictment as being without authority, knowingly, wrongfully, unlawfully, wilfully, and feloniously altered, defaced, broken, destroyed, is not shown to have placed thereon by a person having lawful authority so to do.

8 3. Said indictment, and counts one and two thereof, do not state facts sufficient to constitute a violation of any United States statute in force and effect on January 23, 1913, for the reason that no statute in force at said time gave any person authority to put any tag, seal, label, mark, device, or identification mark on any box car and did not prohibit tearing, defacing, altering, breaking, or destroying of any tag, mark, label, device, seal, or identification mark or any box car.

4. That said indictment, and counts one and two thereof, do not state facts sufficient to constitute a violation of any United States statute in force and effect on January 23, 1913, or any violation of the sections referred to in said indictment as act of Congress approved June 30, 1906, entitled "An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1907," for the reason that said indictment and counts do not state that said defendants are persons, firms, or corporations or the officers or agents of any such person, firm, or corporation within the meaning of said statute.

CHAS. LEWIS,
LEWIS HOWARD,
FRED WITHERS,
JAMES McBEE.
By THOMPSON & BRADY,
Attorneys for Defendants.

(Endorsed:) No. 4134. In the District Court of the United States for the District of Kansas. First Division. The United States of America, plaintiff, *vs.* Charles Lewis, Lewis Howard, Fred Withers, and James McBee, defendants. Motion to quash indictment. Filed Jan. 13, 1914. Morton Albaugh, clerk. Thompson & Brady, Kansas City, Kansas.

9 Be it remembered that at a term of the District Court of the United States for the District of Kansas, First Division, begun and held at the city of Kansas City in said division and district on Monday the 12th day of January, 1914, the following proceedings, among others, were had and appear of record in said court in Journal "S," to-wit.

TUESDAY, *January 13, 1914.*

THE UNITED STATES
vs.
CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, and James McBee. } No. 4134.

Now, on this day comes on for hearing defendants' motion to quash the indictment herein; the United States appearing by Fred Robertson, United States attorney; defendants appearing by Thompson & Brady, their attorneys; and thereupon the court having heard the arguments of counsel, takes said motion under advisement.

10 In the District Court of the United States for the District of Kansas, First Division.

UNITED STATES OF AMERICA, PLAINTIFF,
v.
CHARLES LEWIS, ET AL., DEFENDANTS. } No. 4134. Criminal.

Memoranda of decision on motion to quash indictment.

This is a prosecution brought by the Government under the provisions of an act approved June 30, 1906 (34 Stat. at Large, 674), making provision for inspection of meats transported in interstate commerce.

Defendants have moved to quash the indictment on the ground it charges no public offense against them, and on other grounds.

From an examination of the charges made against defendants in the indictment, and a reading and consideration of the provisions of the entire act on which the indictment and prosecution are based, I am of the opinion defendants, as shown on the face of the indictment, are not included within its provisions, but that the same relates alone to those engaged in the business of preparing meats for transporta-

tion, and the carrying, or assisting in the carrying, of such meats in interstate transportation.

Therefore, the motion to quash the indictment must be sustained. It is so ordered. To which the Government at the time duly excepted.

JOHN C. POLLOCK, *Judge*.

11 (Endorsed:) #4143. Memo. of decision on motion to quash. Filed Jany. 20, 1914. Morton Albaugh, clerk.

12 Be it remembered that at a term of the District Court of the United States for the District of Kansas, First Division, begun and held at the city of Kansas City in said division and district on Monday the 12th day of January, 1914, the following proceedings, among others, were had and appear of record in said court in Journal S, to wit:

TUESDAY, *January 20th, 1914*.

THE UNITED STATES
vs.
CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, and JAMES MCBEE. } No. 4134.

Now, on this 20th day of January, 1914, this cause comes on for decision upon defendants' motion to quash the indictment herein, the same having heretofore been argued by counsel and submitted to the court. Thereupon the court having considered said motion to quash the indictment herein finds the same should be sustained.

It is therefore ordered that defendants' motion to quash the indictment herein be, and the same is hereby, sustained as to both counts of said indictment, and it is further ordered that defendants be released from custody and go hence without day; to which ruling and order of the court the plaintiff, The United States of America, duly excepted and excepts.

13 In the District Court of the United States for the District of Kansas, First Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, and JAMES MCBEE, DEFENDANTS. } No. 4134.

Petition for writ of error.

Considering itself aggrieved by the final decision of the United States District Court for the District of Kansas in rendering judgment against it upon January 20th, 1914, quashing the indictment in

the above-entitled case, the plaintiff hereby prays a writ of error from said decision and judgment to the Supreme Court of the United States of America.

Said decision and judgment quashing the said indictment is based on a construction of the statute upon which the said indictment is founded, said statute being chap. 3913 of the act of Congress of the United States approved June 30th, 1906, 34 Statutes at Large, p. 674.

Assignment of errors filed herewith.

FRED ROBERTSON,
United States Attorney for the District of Kansas.

(Endorsed:) No. 4134. In the District Court of the United States, District of Kansas, First Division. United States of America, plaintiff, vs. Charles Lewis, Lewis Howard, Fred Withers, and James McBee, defendants. Petition for writ of error. Filed Feb. 14, 1914. Morton Albaugh, clerk.

14 In the District Court of the United States for the District of Kansas, First Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, and JAMES MCBEE, defendants. } No. 4134.

Assignment of errors.

Now comes the above-named plaintiff in error, the United States of America, and files herewith its petition for a writ of error, and says that there are errors in the records and proceedings of the above-entitled case, and for the purpose of having the same reviewed by the Supreme Court of the United States of America, makes the following assignment of errors:

The District Court of the United States for the District of Kansas erred in holding and deciding that the motion of the defendants in error to quash the indictment should be sustained, and further erred in rendering judgment in favor of the defendants in error and against the plaintiff in error, pursuant to its ruling upon said motion.

Said errors are more particularly set forth as follows:

Said District Court of the United States for the District of Kansas erred in holding and deciding:

First. The court erred in its decision quashing the indictment because, under chapter 3913 of the act of Congress of the United
15 States, approved June 30th, 1906, 34 Statutes at Large, page 674, it did not, in either count thereof, charge the defendants or any of them with an offense, and thus erred in its construction of the statutes upon which the indictment was based.

Second. That neither count one nor count two of the said indictment stated facts sufficient to constitute a violation of any statute of the United States in force and effect upon January 23rd, 1913.

For which errors the plaintiff in error, the United States of America, prays that said judgment of the District Court of the United States for the District of Kansas, First Division, rendered upon January 20th, 1914, be reversed, and the said court directed to overrule the said motion to quash said indictment, and for costs.

FRED ROBERTSON,
United States Attorney for the District of Kansas.

(Endorsed:) No. 4134. In the District Court of the United States. District of Kansas, First Division. United States of America, plaintiff, vs. Chas. Lewis, Lewis Howard, Fred Withers, and James McBee, defendants. Assignment of errors. Filed Feb. 14, 1914. Morton Albaugh, clerk.

16 In the District Court of the United States, District of Kansas, First Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, and JAMES McBEE, defendants. } No. 4134.

Order allowing writ of error.

On this 16th day of February, 1914, this the above-entitled cause comes on for hearing before the Honorable John C. Pollock, judge of the District Court of the United States for the District of Kansas, First Division, sitting at his chambers in Kansas City, Kansas, upon motion of Fred Robertson, United States attorney for the District of Kansas, and attorney for the plaintiff, and upon filing a petition for a writ of error, and an assignment of errors, it is ordered that a writ of error be, and hereby is, allowed to review in the Supreme Court of the United States of America the decision and judgment heretofore entered herein.

JOHN C. POLLOCK,
Judge of the District Court of the United States for the District of Kansas, First Division.

(Endorsed:) No. 4134. In the District Court of the United States. District of Kansas, First Division. United States of America, plaintiff, vs. Charles Lewis, Lewis Howard, Fred Withers, and James McBee, defendants. Order allowing writ of error. Filed Feby. 16, 1914. Morton Albaugh, clerk.

17 In the District Court of the United States for the District of Kansas, First Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, and JAMES McBEE, defendants. } No. 4134.

Writ of error.

The President of the United States to the Honorable John C. Pollock, the judge of the District Court of the United States for the District of Kansas, greeting:

Because, in the record and proceedings, as also in the rendition of the decision and judgment of a plea which is in the said court before you, between the United States of America, plaintiff in error, and Charles Lewis, Lewis Howard, Fred Withers, and James McBee, defendants in error, a manifest error hath happened to the great damage of the said the United States of America, plaintiff in error, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at the city of Washing-
18 ton, in the District of Columbia, on the 18th day of March, 1914, within the United States of America, to be then and there held, that the record and proceedings aforesaid be inspected, and the said the Supreme Court of the United States of America may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable E. D. White, Chief Justice of the United States of America, the 15th day of February, in the year of our Lord one thousand nine hundred and fourteen.

[SEAL.]

MORTON ALBAUGH,
Clerk of the United States Court for the District of Kansas, First Division.

Allowed by:

JOHN C. POLLOCK,
Judge of the United States Court for the District of Kansas, First Division.

Return to writ.

UNITED STATES OF AMERICA,
First Division of the Judicial District of Kansas, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified tran-

script of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said District Court, at office in the city of Topeka, this 26th day of February, A. D. 1914.

[SEAL.]

MORTON ALBAUGH,
Clerk of said Court.

(Indorsed:) No. 4134. In the District Court of the United States, District of Kansas, First Division. United States of America, plaintiff, vs. Charles Lewis, Lewis Howard, Fred Withers, and James McBee, defendants. Writ of error.

19 In the District Court of the United States, District of Kansas, First Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, and JAMES MCBEE, defendants. } No. 4134.

Præcipe.

To MORTON ALBAUGH, *Clerk of said Court:*

You are requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to writ of error allowed in the above-entitled cause, and to include in such transcript of record the following and no other papers and exhibits, to wit:

Report of grand jury upon return of indictment.
Order for filing indictment.
The indictment.
Motion to quash indictment.
Order of court, January 13, 1914, taking case under advisement.
Memoranda decision and also order of court upon motion to quash indictment, both bearing date of January 20th, 1914.
Petition for writ of error.
Assignment of errors.
Order allowing writ of error.
Writ of error.
Citation.

FRED ROBERTSON,
United States Attorney for the District of Kansas.

20 The undersigned attorneys for the defendants in error acknowledge receipt of a copy of the foregoing præcipe this 19th day of February, 1914, and join in the request of the said United States district attorney that the transcript of record in this

case be composed of the papers and exhibits as in said præcipe set forth.

THOMPSON & BRADY,
Attorneys for Defendants in Error.

(Endorsed:) No. 4134. In the District Court of the United States, District of Kansas, First Division. United States of America, plaintiff, vs. Charles Lewis, Lewis Howard, Fred Withers, and James McBee, defendants. Præcipe. Filed Feby. 25, 1914. Morton Albaugh, clerk.

21 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, Morton Albaugh, clerk of the District Court of the United States of America for the District of Kansas, do hereby certify the foregoing to be true, full, and correct copies of so much of the record and proceedings in case No. 4134, entitled The United States of America vs. Charles Lewis et al., in said court as is called for by the præcipe filed herein.

I further certify that the original citation and writ of error are attached hereto and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Topeka, in said district of Kansas, this 26th day of February, 1914.

[SEAL.] MORTON ALBAUGH, *Clerk.*

(Indorsement on cover:) File No. 24078. Kansas D. C. U. S. Term No., 927. The United States, plaintiff in error, vs. Charles Lewis, Lewis Howard, Fred Withers, and James McBee. Filed March 4th, 1914. File No. 24078.

SUPREME COURT, U. S.
FILED
MAY 9 1914
JAMES D. MAHER
CLERK

No. [redacted]380

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

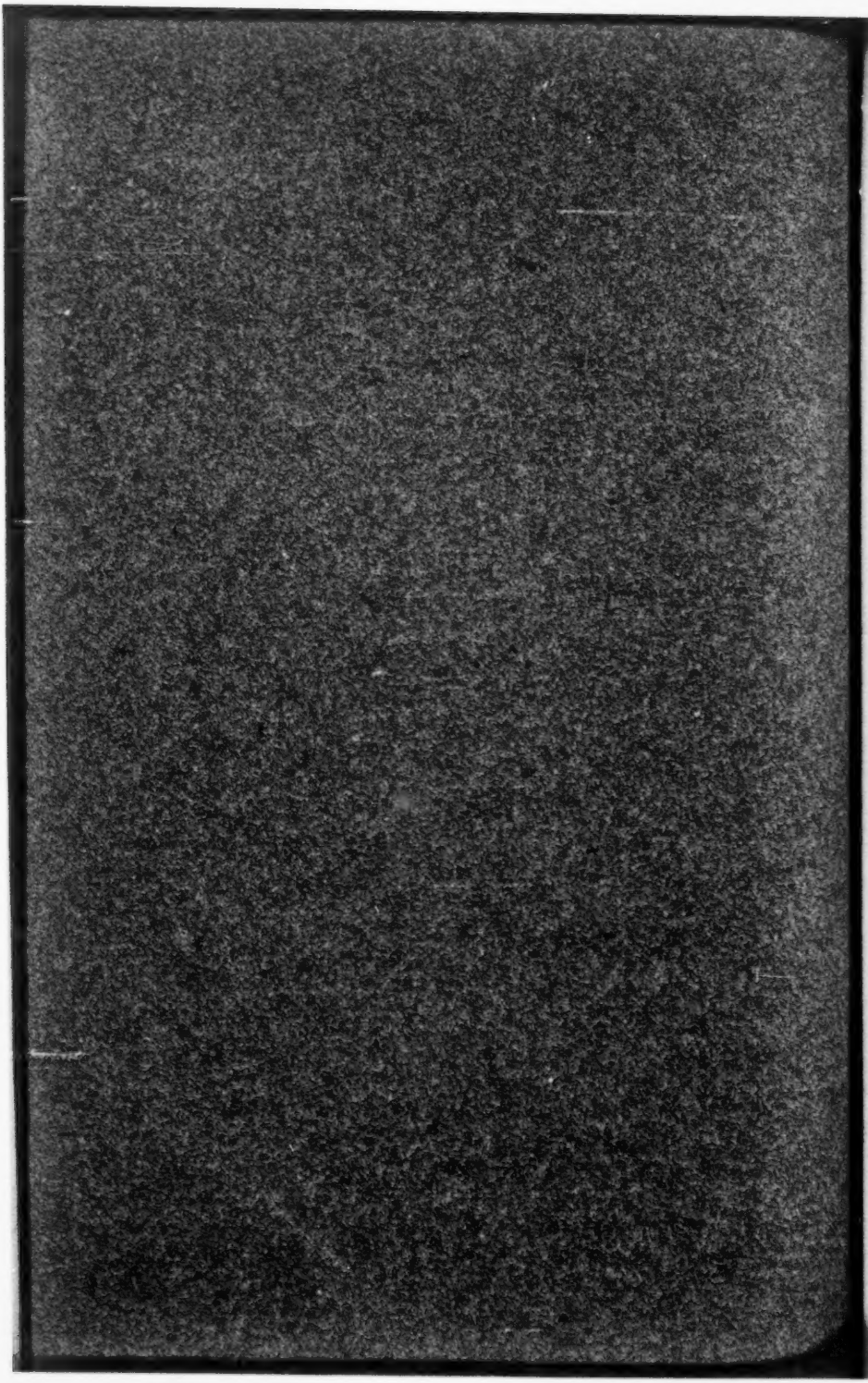
THE UNITED STATES, PLAINTIFF IN ERROR,

v.

CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, AND JESSE McBEE.

IN ERROR TO THE EASTERN DIVISION OF THE WESTERN DISTRICT OF THE INDIAN TERRITORY.

MOTION OF THE UNITED STATES TO ADVANCE.



In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, and JAMES McBEE. } No. 927.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General, and, in accordance with the provisions of the Criminal Appeals Act of March 2, 1907, 34 Stat. 1246, moves the court to advance this cause for hearing at an early day convenient to the court during the next term.

This was a prosecution for breaking and defacing a Government seal attached to a freight car containing meat and meat products under Government supervision and inspection and offered for transportation from the State of Kansas to the State of New Jersey.

The indictment contains two counts. The first count charges the defendants with breaking the Government seal in violation of certain rules and regulations promulgated by the Secretary of Agriculture

under authority of the act of Congress approved June 30, 1906, 34 Stat. 669, 677.

The second count is identical, except that it describes with more particularity the seal which was broken.

The defendants moved to quash the indictment, and the District Court sustained the motion, holding—

1. That defendants were not within the provisions of the Act of June 30, 1906; and

2. That said act relates only to those engaged in the business of preparing meats for transportation, and the carrying or assisting in the carrying of such meats in interstate transportation.

Notice of this motion has been served on opposing counsel.

JOHN W. DAVIS,
Solicitor General.

MAY, 1914.

○

No. 880.

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, PLAINTIFF IN ERROR,

v.

CHARLES LOBUE, LEWIS HOWARD, FRED WOMBACK, AND JAMES MCBEE.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
CHARLES LEWIS, LEWIS HOWARD, FRED WITHERS, and JAMES McBEE.
No. 380.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

Charles Lewis, Lewis Howard, Fred Withers, and James McBee were indicted in the District Court of the United States for the District of Kansas for an alleged violation of the so-called meat inspection law, incorporated in the "Act making appropriations for the Department of Agriculture," approved June 30, 1906 (34 Stat., c. 3913, pp. 669, 674).

Defendants moved to quash the indictment. No evidence was adduced and the hearing was upon the pleadings. The motion was sustained and the Government thereupon brought this writ of error in accordance with the Criminal Appeals Act of March 2, 1907, 34 Stat., c. 2564, p. 1246.

STATEMENT OF FACTS.

The indictment contains two counts, the allegations of which are substantially as follows:

The first count charges that defendants unlawfully broke and destroyed a Government seal, attached "in accordance with the rules and regulations issued by the Secretary of Agriculture under authority of the act of Congress approved June 30, 1906," to a freight car containing meat and meat products, "then and there under Government supervision for inspection and offered for transportation from the State of Kansas to the State of New Jersey."

The second count charges, in similar words, the unlawful breaking and destroying of a Government label affixed to the same car.

The pertinent parts of the statute in question are as follows:

> That no person, firm, or corporation, or officer, agent, or employee thereof, shall forge, counterfeit, simulate, or falsely represent, or shall without proper authority use, fail to use, or detach, or shall knowingly or wrongfully alter, deface, or destroy, or fail to deface or destroy, any of the marks, stamps, tags, labels, or other identification devices provided for in this act, or in and as directed by the rules and regulations prescribed hereunder by the Secretary of Agriculture, on any carcasses, parts of carcasses, or the food product, or containers thereof,

subject to the provisions of this act. (34 Stat., c. 3913, p. 669, 677.)

That any person, firm, or corporation, or any officer or agent of any such person, firm, or corporation, who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished on conviction thereof by a fine of not exceeding ten thousand dollars or imprisonment for a period not more than two years, or by both such fine and imprisonment, in the discretion of the court. (34 Stat., c. 3913, p. 669, 678.)

The regulation issued by the Secretary of Agriculture which was violated by defendants is as follows:

An official establishment may ship from the said establishment to any other official establishment any meat or meat food product which has been inspected and passed under these regulations without marking the same "Inspected and passed," if such shipment be placed in a railroad car which is sealed by an employee of the Bureau of Animal Industry, and provided that not less than 25 per cent of the contents of each car consists of meat or meat food products not marked "Inspected and passed." (Department of Agriculture Regulations Governing Meat Inspection, effective May 1, 1908; regulation 25, sec. 12, par. 1.)

SPECIFICATIONS OF ERROR.

The assignments of error appear on page 7 of the record, the substance of which is that the court

erred in quashing the indictment and in so construing the meat-inspection act as to exclude from its operation all persons except those "engaged in the business of preparing meats for transportation" or in "the carrying, or assisting in the carrying, of such meats in interstate transportation."

ARGUMENT.

In construing the statute in question, the District Court held that "same relates alone to those engaged in the business of preparing meats for transportation, and the carrying, or assisting in the carrying, of such meats in interstate transportation." (Record, p. 5.)

Defendants not coming within these two classes, the court held that the act did not apply to them.

This court has jurisdiction only to review the construction placed upon the act by the lower court (*United States* v. *Stevenson*, 215 U. S., 190; *United States* v. *Keitel*, 211 U. S., 370), and must accept its interpretation of the indictment (*United States* v. *Patten*, 226 U. S., 525, 535).

The single question presented in this case, therefore, is, whether persons other than members of the two classes above mentioned are included within the terms of the statute.

The act provides that "No person, firm, or corporation, or officer, agent, or employee thereof" shall do any of the things prohibited by its terms; and also "That any person, etc.," who shall violate

any of the provisions of the act shall be guilty of a misdemeanor.

The terms "No person" and "Any person" are universal. There is nothing in the act to indicate that Congress intended to use these words in any other than their ordinary meaning, and they should not by construction be restricted to merely two classes comprehended within the broad meaning of the terms used.

> Statutes in derogation of the common law and penal statutes are not to be construed so strictly as to defeat the obvious intention of Congress as found in the language actually used according to its true and obvious meaning. (Syllabus.) (*Johnson* v. *Southern Pacific Co.*, 196 U. S., 1.)

The court, in the Johnson case (p. 18), quotes with approval the following from the opinion of Mr. Justice Story in the case of *United States* v. *Winn* (3 Sumn. 209, 211):

> But where the words are general, and include various classes of persons, I know of no authority which would justify the court in restricting them to one class, or in giving them the narrowest interpretation, where the mischief to be redressed by the statute is equally applicable to all of them.

When the mischief to be redressed by this statute is considered, it is apparent that the remedy, to be effective, must be universal in its application, and it must be assumed that Congress intended to provide an efficient remedy.

> There is a presumption against a construction which would render a statute ineffective or inefficient, or which would cause grave public injury or even inconvenience. (Syllabus.) (*Bird* v. *United States,* 187 U. S., 118.)
>
> Another guide to the meaning of a statute is found in the evil which it is designed to remedy. (*Church of the Holy Trinity* v. *United States,* 143 U. S., 457, 463.)

This is a health measure, its purpose being, as stated in the act, to prevent "the use in interstate and foreign commerce, as hereinafter provided, of meat and meat food products which are unsound, unhealthful, unwholesome, or otherwise unfit for human food." To accomplish this purpose the act provides for the inspection of such articles of commerce and for so marking and sealing them that the inspection may be of value.

In order to exclude unwholesome meat from interstate commerce and to insure the public that meats passing in such commerce have been properly inspected and found to be wholesome, it is necessary for the Government, at all times during such movement, to have effectual oversight and control thereof. This is accomplished by the use of identification devices provided for in the act.

Unless such devices are kept intact until such meats reach the consumer, visual supervision would have to be constantly maintained. This is wholly impracticable and a construction of the statute requiring it would be absurd.

> Evidently the means of identification (provided for in the oleomargarine act), to wit, the marks, stamps, or labels, are to attend, go with, and be attached to these meats or products until they have reached the hands of the consumer. (*United States* v. *Green*, 137 Fed., 179, 183.)

This court has held, in a case arising under the pure food and drugs act, that:

> Congress may determine for itself the character of the means necessary to make its purpose effectual in preventing the shipment in interstate commerce of articles of a harmful character, and to this end may provide the means of inspection, examination, and seizure necessary to enforce the prohibitions of the act, and when section 2 has been violated the Federal authority, in enforcing either section 2 or section 10, may follow the adulterated or misbranded article at least to the shelf of the importer. (*McDermott* v. *Wisconsin*, 228 U. S., 115, 135.)

In this case the court held that the protection of the label extended at least to the time of "the first sale by the importer," and that the State of Wisconsin could not by statute require the removal of same prior to such time.

> To require the removal or destruction before the goods are sold, of the evidence which Congress has by the Food and Drugs act, as we shall see, provided may be examined to determine the compliance or noncompliance with the regulations of the Federal law, is beyond the power of the State. (Id., 134.)

If it is beyond the power of a State to remove a brand affixed under a Federal statute to an article of interstate commerce, certainly the statute now under review will not be construed, its language not imperatively demanding such construction, to permit all persons other than "those engaged in the business of preparing meats for transportation, and the carrying, or assisting in the carrying, of such meats in interstate transportation," to knowingly and feloniously destroy the marks of idenification placed thereon in conformity with the provisions of the act.

> Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or absurd conclusion. (*Lau Ow Bew* v. *United States,* 144 U. S., 47, 59.)

The administration of the law would be ineffectual or impossible, unless the inviolability of the identification devices be guaranteed. Proper inspection and labeling would be to no purpose if immediately thereafter the labels or seals could be destroyed with impunity. Where the consumption of unsound meat results from the destruction of identification devices by certain individuals, the effect upon the public health is the same whether defendants are manufacturers or carriers, or merely trespassers. This being true, it is of no significance that one person rather than another destroys the means of identifying inspected meats.

In construing the words "any person" used in section 3 of the oleomargarine act (24 Stat., c. 840, p. 209), as amended by section 2 of the act of May 9, 1902 (32 Stat., c. 784, p. 193), the Circuit Court of Appeals for the Eighth Circuit say, in a case where a construction similar to the one contended for in the present case was sought:

> They (the words "any person") are broad and comprehensive and easily embrace any and all persons whether licensed wholesale or retail dealers or otherwise; and by a familiar rule of construction they should be given full force and effect, to the end that the legislative purpose may be subserved. We think there is no merit in this first objection to the indictment. (*Vermont* v. *United States*, 174 Fed., 792, 794.)

The same court made a similar ruling in the case of *May* v. *United States*, 199 Fed., 42, 48.

CONCLUSION.

The construction given to the act by the court below is too narrow. The judgment quashing the indictment should be reversed and the act so construed as to prohibit the violation of its provisions by any person whatsoever.

E. MARVIN UNDERWOOD,
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